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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,521	01/14/2002	Bogdan Szafraniec	10010748	3471

7590 12/11/2003  
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EXAMINER

LYONS, MICHAEL A

ART UNIT	PAPER NUMBER
2877	

DATE MAILED: 12/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/046,521	<b>Applicant(s)</b> SZAFRANIEC ET AL.	
	<b>Examiner</b> Michael A. Lyons	<b>Art Unit</b> 2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5 and 7-13 is/are allowed.
- 6) ☒ Claim(s) 6 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
     a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 6 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Szfraniec et al (6,486,961).**

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Regarding claim 6, Szfraniec (Fig. 1) discloses a tunable laser source 112 with an inherent beam splitter for emitting two initial light beams, an optical coupler 130 for splitting light beam 140 into a first path 138 towards device under test 104 and a second light-path 142, with the optical coupler acting also as a recombiner for superimposing the reference and measurement beams from the DUT interferometer, a first power detector 134, a second optical coupler 114 to split light beam 122 and accordingly recombine beams 128 and 124 in the reference interferometer, a second power detector 120, and a processing module 110 as an

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evaluation unit. It should be noted that the functional recitation for the evaluation unit has not been given patentable distinction because it is narrative in form. In order to be given patentable distinction, a functional recitation must be expressed as a “means” for performing the specified function (such as an evaluation unit means for . . .), as set forth in 35 USC 112, 6<sup>th</sup> paragraph, and must be supported by recitation in the claim of sufficient structure to warrant the present of the functional language. *In re Fuller*, 1929 C.D. 172; 388 O.G. 279.

As for claim 14, the DUT is used as a heterodyne optical network analyzer, as the device is an optical network analyzer relying on a heterodyne beat signal (abstract).

***Allowable Subject Matter***

**Claims 1-5, and 7-13 are allowed in view of the prior art.**

The following is a statement of reasons for the indication of allowable subject matter:

As for claims 1, 5, and 11, the prior art of record, taken either alone or in combination, fails to disclose or render obvious a method and software program for the determination of an optical property of an optical device under test, where the time-delay between the first signal, the measurement signal from the measurement interferometer and DUT, and the second signal, the reference signal from the reference interferometer, is compensated for to, finally, derive a frequency dependency of the first signal to determine the optical property of the DUT, in combination with the rest of the limitations of the above claims.

As to claim 7, the prior art of record, taken alone or in combination, fails to disclose or render obvious a method of determination of an optical property of an optical device under test where the time dependency of the optical frequency of an optical beam is synchronized with a time dependence, with this synchronized time dependency being used to derive the frequency

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dependency of the optical property of the device under test, in combination with the rest of the limitations of the claim.

***Response to Arguments***

Applicant's arguments, see the amendment, filed August 29, 2003, with respect to the first Office Action's rejections of claims 1-5, and 7-13 have been fully considered and are persuasive. The rejections of claims 1-5 and 7-13 has been withdrawn.

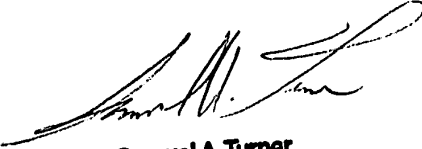
Applicant's arguments, see the amendment, filed August 29, 2003, with respect to the rejection(s) of claim(s) 6 and 14 under 35 USC 102 and 103, respectfully have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Szfraniec et al, as disclosed above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael A. Lyons whose telephone number is 703-305-1933. The examiner can normally be reached on Monday thru Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G Font can be reached on 703-308-4877. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0935.

MAL  
November 24, 2003



**Samuel A. Turner**  
Primary Examiner